STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6860

Petitions of Vermont Electric Power Company, Inc. (VELCO) and Green Mountain Power Corporation (GMP) for a certificate of public good, pursuant to 30 V.S.A. Section 248, authorizing VELCO to construct the so-called Northwest Vermont Reliability Project, said project to include: (1) upgrades at 12 existing VELCO and GMP substations located in Charlotte, Essex, Hartford, New Haven, North Ferrisburgh, Poultney, Shelburne, South Burlington, Vergennes, West Rutland, Williamstown, and Williston, Vermont; (2) the construction of a new 345 kV transmission line from West Rutland to New Haven; (3) the reconstruction of a portion of a 34.5 kV and 46 kV transmission line from New Haven to South Burlington; and (4) the reconductoring of a 115 kV transmission line from Williamstown to Barre, Vermont –	)

Order entered: 9/23/2005

ORDER ON REMAND RE REOPENING PROCEEDINGS

I. INTRODUCTION

On January 28, 2005, the Vermont Public Service Board ("Board") issued a Certificate of Public Good ("CPG"), with significant conditions, authorizing Vermont Electric Power Company, Inc. ("VELCO") and Green Mountain Power Corporation ("GMP") (collectively, "Petitioners") to construct a transmission system upgrade known as the Northwest Reliability Project ("NRP" or the "Project").

The evidence that VELCO presented to us indicated that the estimated cost of the Project would be approximately $120 million. Our January 28, 2005, Order analyzed various alternatives to the NRP and concluded that, while one of the alternatives (Alternative Resource Configuration, or "ARC," number 5) would likely have lower overall societal costs,

> construction of the proposed Project is the most cost-effective means of meeting the current and future demand for service in northwest Vermont. No other proposal presented in this case, including the generation, energy efficiency, and

load response measures included in the various ARCs, can meet the expected need for service with an appropriate level of reliability in a timely manner.[1]

Nearly six months after we issued our Order — on July 8, 2005 — VELCO informed us that its estimated cost for the Project had risen to approximately $198 million, with an additional 15 percent contingency that could bring the total projected cost to $228 million.[2] The increased cost results largely from increases in the market cost for materials, equipment and services necessary for Project construction, and from the Order's conditions, many of which were requested by the intervenors.

In today's Order, we consider whether to reopen our previous conditional approval of the Northwest Reliability Project in light of the substantial increase in its estimated cost. We have reviewed the evidence and arguments presented by the parties in light of the applicable legal standards, and weighed the implications of reopening our proceeding on the public good. Notwithstanding the impact on Vermont ratepayers — as much as $45 million in additional costs, depending on how much of the new costs are ultimately shared throughout the New England region — and the inaccuracy of the cost estimates that VELCO originally presented, we conclude that we should not reopen our January 28, 2005, Order. We have reached this conclusion for the fundamental reasons that, based on the record before us: (1) reopening the proceeding to consider the higher cost estimate would be unlikely to change the outcome, due to a lack of feasible alternatives to the NRP; (2) delays attendant to reopening the proceeding could further increase the costs of the NRP; and (3) those delays would present significant risks to the reliability of Vermont's electrical system.

II. PROCEDURAL HISTORY

A. The Original Proceedings

On June 5 and June 9, 2003, VELCO and GMP, respectively, filed petitions with the Board seeking a CPG, pursuant to 30 V.S.A. § 248, for the construction of the NRP, which consists of a new 345 kV transmission line from West Rutland to New Haven, the upgrade to

1. Order of 1/28/05 at 52.

2. VELCO's original $120 million estimate included allowances for contingencies. *See* Finding 4, below. Thus, the $228 million estimate is the appropriate figure for comparison to the $120 million estimate.

115 kV of a portion of a 34.5 kV and 46 kV transmission line from New Haven to South Burlington, upgrades at a number of existing VELCO and GMP substations, and the reconductoring of an existing 115 kV transmission line from Williamstown to Barre, Vermont.[3]

On February 6, 2004, the Petitioners filed proposed modifications to the Project (the "Reroute"). The proposed modifications included several changes to the route of the proposed 115 kV transmission line from New Haven to South Burlington, changes to substations located in Vergennes, Shelburne, Charlotte and South Burlington, and changes in pole heights for both the 115 kV and the 345 kV lines.

Between September 5, 2003, and December 6, 2004, we held five public hearings and 36 days of technical hearings on the Project.

Over the course of the Board's proceeding, some parties proposed changes to the design of the Project, including a relocation of VELCO's proposed expanded substation in New Haven and underground placement of the 115 kV line as it crosses Ferry Road in Charlotte and along Bay Road in Shelburne.

On January 28, 2005, the Board issued an Order granting a CPG for the Project. The CPG included substantial conditions; some conditions required modifications to the Project design. Those modifications included the relocation of the expanded New Haven substation, relocation of both the proposed 345 kV line and an existing 115 kV line in Salisbury, and placement of the 115 kV transmission line underground along Bay Road in Shelburne.

The Board's Order also rejected the above-ground designs for the 115 kV line crossing at Ferry Road that VELCO proposed.[4] The Order required VELCO to work with the parties and affected landowners to develop an acceptable design for Ferry Road, concluding that "[a]s VELCO itself acknowledges in its brief, should it be unable to design an appropriate overhead alternative, it will need to place the 115 kV line underground in this area."[5]

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3. *See* Appendix D of the January 28, 2005, Order for a comprehensive description of the Project.

4. VELCO had proposed three different configurations, all for an overhead line across Ferry Road. *See,* Order of 1/28/05 at 113–14.

5. Order of 1/28/05 at 117 (footnote citation omitted).

Several parties filed requests to alter, to amend, or to clarify the January 28, 2005, Order. On March 11, 2005, the Board issued an Order Re: Motions to Alter or Amend and Request For Clarification and Other Corrections.

Appeals of the Board's Order to the Vermont Supreme Court were filed by the following parties: Meach Cove Real Estate Trust; Ray A. Simmons, Jr.; the Town of Shelburne ("Shelburne"); and, jointly, by the Town of New Haven ("New Haven"), Addison County Regional Planning Commission ("ACRPC"), and the Town of Middlebury. Cross-appeals were filed by the Agency of Natural Resources and by the Vermont Department of Public Service ("Department").

B. The Cost Increase and Remand from the Supreme Court

On July 8, 2005, VELCO filed a revised estimate of the NRP costs. In its filing, VELCO represented that the projected costs of the Project had increased to $198 million, with an additional 15 percent contingency (for an estimate of total possible costs of $228 million).

On July 11, 2005, the Board issued a memorandum to the parties stating that the cost increases appeared to be relevant to conclusions reached in the January 28, 2005, Order. The memorandum noted that the Board's "present intention" was to ask the Vermont Supreme Court for a remand so that the Board could consider the implications of the increased costs. The memorandum set a deadline for parties to comment on the appropriateness of the Board seeking such a remand. Comments in response to the Board's July 11 memorandum were filed by the Department, New Haven, Shelburne, Vermont Citizens for Safe Energy, Inc., and jointly by VELCO and GMP.

On July 15, 2005, the Board issued a memorandum noting that, from the parties' comments, it appeared that at least one party would request that the Supreme Court remand the proceeding to the Board. The Board informed the parties that "[i]f no party has filed a motion for a remand by July 25, 2005, the Board will determine whether any action by the Board is appropriate."

On July 20 and 22, New Haven and the Department, respectively, each filed a motion for a remand with the Court.

On August 24, 2005, the Vermont Supreme Court remanded this Docket to the Board. The Court's Order in its entirety provided that:

> The request for a remand of this case is granted. The remand is limited to allowing the Public Service Board to determine whether to reopen the proceedings below in light of the new cost information. The Board shall render its decision within thirty days of the date of this order, and the appeal will be put on waiting status during the remand period.

On August 25, the Board issued a memorandum establishing a schedule for the proceedings on remand. The schedule provided an opportunity for parties to file legal memoranda and motions regarding whether the proceedings should be reopened, requests for an evidentiary hearing, and responses to any such filings.[6]

On September 1, 2005, the parties submitted the following filings: motions to reopen the Proceeding and memoranda of law were filed by the Conservation Law Foundation ("CLF") and by the Town of New Haven ("New Haven"); memoranda on reopening were filed by the Department and the Petitioners; and the Vermont Business Roundtable filed a letter with its recommendations.

On September 6, 2005, reply memoranda were filed by CLF, New Haven, the Department, and the Petitioners.

On September 8, 2005, we heard oral argument on whether we should reopen our proceeding in light of the new cost information, and whether an evidentiary hearing would be necessary for us to make that determination. We concluded that we would hold such an evidentiary hearing, which we convened on September 12, 2005. At the September 12 hearing, the only parties to present witnesses were VELCO and ISO-New England, Inc.

On September 12, 2005, post-hearing briefs were filed by CLF, New Haven, the Department, and the Petitioners. The Department and the Petitioners filed reply briefs on September 19, 2005.

On September 20, 2005, Meach Cove Real Estate Trust filed a letter stating that it joins in, and adopts, all of New Haven's filings concerning the remand proceeding.

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6. The memorandum expressly provided that "[i]n their legal memoranda, the parties should address whether an evidentiary hearing is needed in order for the Board to render a decision on reopening the proceedings."

III. FINDINGS

To the extent any findings proposed by parties are incorporated herein, they are granted; otherwise, they are denied.

The Original Cost Estimate

1. In its original Petition filed on June 5, 2005, VELCO estimated the total cost of the NRP to be approximately $128 million. This figure included approximately $8 million in costs related to the installation of a phase-angle regulator at the Sand Bar substation, which VELCO subsequently withdrew from the NRP for review in a separate proceeding (Docket No. 6852). Without the upgrades at the Sand Bar substation, VELCO's projected cost for the NRP at the time it filed its Petition was approximately $120 million. Exh. VELCO-TD-21; Dunn pf. at 7.

2. According to the Department's analysis, VELCO's original cost projection underestimated the cost of the Project by approximately $19 million. Smith pf. at 15–18.

3. On February 6, 2004, VELCO filed proposed modifications to the NRP. The proposed modifications included several changes to the route of the proposed 115 kV transmission line from New Haven to South Burlington, and changes to substations located in Vergennes, Shelburne, Charlotte and South Burlington. These modifications added an estimated $1.2 million to the projected cost of the NRP. Dunn supp. pf. at 3; *see also* Order of 1/28/05 at Appendix C (Procedural History); Smith and Litkovitz, supp. pf. at 6.

4. VELCO's original cost estimate included allowances for contingencies. The estimate added contingencies of five percent on direct costs for materials and ten percent on direct costs for labor. VELCO appears to have applied the same contingency values to indirect costs. Exh. DPS-Cross-244-REM; 9/12/05 tr. at 157 (Pence); tr. 9/12/05 at 157 (Dunn).

The Revised Cost Estimate

5. In 2004, VELCO had completed construction on portions of its Northern Loop project; those portions came in under budget. Also, in June, 2004, the Sand Bar phase angle regulator was completed and placed into service at a cost $2 million less than budget. It was only near the end of 2004, when costs for other transmission projects in the northeast began escalating, that

VELCO became aware that the market costs of transmission construction were rising sharply. Tr. 9/12/05 at 162–70 (Dunn, Pence).

6. At the end of 2004, the NRP project manager proposed to VELCO's Board of Directors that, once the Board issued a CPG, a new cost estimate be prepared. The project manager made this recommendation because of the increases in costs for other transmission projects at that time, and because he expected that the Board would require changes to the Project that could affect its costs. Tr. 9/12/05 at 18–20 (Dunn).

7. The Public Service Board issued the CPG on January 28, 2005. Beginning in February, VELCO retained two engineering firms to prepare new cost estimates for the NRP, using a more detailed engineering design than was used for the original estimate. The two firms worked independently of each other. VELCO also employed other cost-estimation experts to review the two engineering firms' estimates; those other experts were independent of both engineering firms. Tr. 9/12/05 at 20–24 (Dunn).

8. The two new, independent cost estimates were presented verbally to VELCO's Board of Directors in June, 2005, and were finalized a couple of weeks later. The two estimates were within three percent of each other. Tr. 9/12/05 at 24–25 (Dunn).

9. Based on the updated cost estimates, the Project is now expected to cost approximately $197 million, with an additional 15 percent cost contingency. With the contingency, the Project is now projected to cost as much as $227 million.[7] Exh. VELCO-Remand-1.

10. The increase in estimated Project cost has resulted from three principal drivers:

- first, a high rate of inflation in the cost of materials, equipment, and construction and engineering services since the original estimate was prepared in 2002 and 2003, which accounts for between $34 million and $40 million of increased NRP costs;
- second, changes in scope made during the regulatory process, and refinement of the engineering design since the original filing, which accounts for between $23 million and $28 million of increased NRP costs; and

7. The $198 million estimate includes approximately $1million reflecting the use of steel poles in the 345 kV line. VELCO no longer proposes to use the steel poles (tr. 9/12/05 at 84–85 (LaForest)), so we have subtracted this $1 million from the total, leaving $197 million excluding the contingency and $227 million including it.

- third, an overall increase in the estimated quantities of certain materials such as concrete and steel, which accounts for between $10 million and $15 million of increased NRP costs.

Exh. VELCO-Remand-1; exh. VELCO-Remand-7; tr. 9/12/05 at 33–34 (Pence).

11. The first category – inflation – has been caused by a number of market conditions, including a decrease in the value of the U.S. dollar over the relevant time period. Due to the lower value of the U.S. dollar, the cost of imported NRP components, such as transformers, has increased the cost of the Project. Exh. VELCO-Remand-8; tr. 9/12/05 at 35–37 (Pence).

12. Other market factors that have increased the Project's costs include a limited supply of the materials and of the engineering, manufacturing, and construction personnel needed for large transmission projects like the NRP, and a growing demand for those scarce resources due to a large increase in transmission projects since 2003. Exh. VELCO-Remand-4; exh. VELCO-Remand-8; tr. 9/12/05 at 36–38 (Pence, Dunn).

13. Other large transmission projects in the northeast have experienced cost increases similar to that of the NRP. Tr. 9/12/05 at 33, 37–38, 166–67 (Pence).

14. The second category of cost increases – changes and refinements to the Project – include changes in design that the Board required of the Petitioners, changes in design that the Petitioners themselves proposed (often in response to concerns of the affected communities), and changes resulting from refinements in the engineering design. Exh. VELCO-Remand-1; exh. VELCO-Remand-7; Dunn supp. pf. at 3; tr. 9/12/05 at 39–40 (Pence).

15. Changes that the Board required include the placement of approximately 1.4 miles of 115 kV line underground in the Bay Road area of Shelburne, the relocation of a portion of the 345 kV line and an existing 115 kV line in Salisbury, and the relocation of the expanded New Haven substation. In addition, VELCO has included the increased costs associated with underground placement of the 115 kV line as it crosses Ferry Road in Charlotte. (The Board's January 28, 2005, Order rejected VELCO's overhead designs of that road crossing.) These four design changes, all of which were proposed by intervenors, have added approximately $14 million to $19 million to the cost of the Project. Exh. VELCO-Remand-5; exh. VELCO-Remand-7; Order of 1/28/05 at 99, 141, and 165.

16. The increased costs resulting from Board-ordered design changes illustrate the overall market inflation in the cost of constructing transmission facilities. At the time of the earlier hearings in this Docket, the incremental costs associated with relocating the New Haven substation were estimated to be approximately $1.8 million to $2.3 million; now those incremental costs are projected to be between $3 million and $5 million. Similarly, the added costs from underground construction of the 115 kV line along Bay Road have increased from approximately $3 million to between $7 million and $8 million. Order of 1/28/05 at 98, 102, 129 n. 150; exh. VELCO-Remand-5; exh. VELCO-Remand-7; tr. 9/12/05 at 171–73, 177–79 (Pence, Dunn).

17. The third category of cost increases – reflecting larger quantities of materials than originally anticipated – result from more accurate estimates of those materials, such as yards of concrete, pounds of steel, and length of control wires. As the design for the facilities moves forward, it becomes more detailed and tailored to specific site conditions, allowing for more accurate projections of the materials needed. Tr. 9/12/05 at 20–21 (Dunn), 33–35 (Pence).

Regional Sharing of the Project's Costs[8]

18. The costs of the 115 kV and 345 kV transmission lines and related substations will all be Pool Transmission Facilities ("PTF") costs.[9] The costs of facilities that are intended to serve local load are borne by the local customers (i.e., Vermont consumers), and are referred to as non-PTF costs. Dunn pf. at 16.

19. PTF costs are generally allocated to all of the electric load in New England. Vermont's allocation, based on its proportionate share of the regional load, is approximately 4.09 percent. Dunn pf. at 16; tr. 9/12/05 at 242 (LaForest).

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8. Neither our January 28, 2005, Order nor today's Order rely on the regional sharing of costs as a basis for decision. However, New Haven has presented arguments related to regional cost sharing; in order to address those arguments, we are including these findings.

9. The Restated New England Power Pool ("NEPOOL") Agreement defines Pool Transmission Facilities ("PTF") as "transmission facilities owned by Participants rated 69 kV or above required to allow energy from significant power sources to move freely on the New England transmission network." Dunn pf. at 16 (quoting Section 15.1 of the Restated NEPOOL Agreement).

20. Under VELCO's original cost estimate for the NRP, Vermont would pay approximately $11.7 million, which represents the sum of Vermont's allocated share of regionalized PTF costs plus the non-PTF costs. Dunn pf. at 7, 16.

21. With the Project's current, revised design (reflecting changes required by the Board's January 28, 2005, Order and changes included in VELCO's February 6, 2004, re-route filing), and based on the current, revised cost estimate, approximately $211.3 million of the total $227 million in Project costs are expected to receive PTF treatment. The remaining costs – approximately $15.9 million – would likely not receive PTF treatment. Exh. VELCO Remand-5;[10] tr/ 9/12/05 at 236 –37, 242 (LaForest).

22. For some of the PTF facilities, ISO-New England may declare a portion of their cost to be localized PTF, which are PTF that are not subject to regional cost-sharing. These potentially localized-PTF elements are:

- the underground placement of the 115 kV line at Bay Road in Shelburne and, if ultimately required by the Board, at Ferry Road in Charlotte ($11.5 to 13.8 million in potential localized PTF costs, including the 15 percent contingency);
- relocating the New Haven substation ($3.5 to 5.8 million in potential localized PTF costs, including the 15 percent contingency);
- the redesign of the Granite substation ($5.8 to 8 million in potential localized PTF costs, including the 15 percent contingency);
- the relocation of the Vergennes substation ($3.5 to 4.6 million in potential localized PTF costs, including the 15 percent contingency); and
- the re-route of the 345 kV line in West Salisbury ($1.2 million in potential localized PTF costs, including the 15 percent contingency).

Including the 15 percent contingency, the estimated potential localized PTF cost of these facilities totals approximately $33.3 million.[11] Exh. VELCO-Remand-5; tr. 9/12/05 at 83–84, 235–38 (LaForest).

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10. The figures from Exh. VELCO Remand-5 have been increased by the 15 percent contingency factor, and have been adjusted to reflect the removal of $1 million of PTF costs associated with the 345 kV steel poles that VELCO no longer proposes. *See* tr. 9/12/05 at 84–85, 236–37 (LaForest).

11. Exh. VELCO Remand-5 also includes approximately $1 million of potential localized PTF costs for the use of steel poles in the 345 kV line. Because VELCO no longer proposes to use the steel poles (tr. 9/12/05 at 84–85 (LaForest)), this Finding excludes the $1 million from potential localized PTF costs.

23. Changes to the original design ordered by the Board (and which were sought by intervenors) may not receive regional cost-sharing treatment. Tr. 9/12/05 at 83–84 (LaForest).

24. Of these potential localized PTF elements, VELCO anticipates that the underground segments of the 115 kV line will be localized, and that the Granite redesign will not be localized (i.e., the costs will be shared regionally). The cost treatment of the remaining potential localized-PTF elements is less certain. Tr. 9/12/05 at 85–89, 235–36 (LaForest).

25. After removing the potential localized PTF elements, the remaining PTF costs are highly likely to be shared regionally. These remaining PTF costs total $178 million ($211.3 million of PTF minus $33.3 million of potential localized PTF). Tr. 9/12/05 at 234–37 (LaForest); findings 21 and 22, above.

26. Of the total $227 million in currently projected costs for the NRP, Vermont's maximum possible share[12] is expected to be approximately $56.5 million, calculated as follows:

Non-PTF costs (borne entirely by Vermont):	$15.9 million
Localized PTF costs (borne entirely by Vermont):	$33.3 million
Regionalized PTF costs (4.09 % borne by Vermont):	$ 7.3 million
Total maximum cost borne by Vermont:	$56.5 million

Findings 21–25, above.

27. The actual costs to be assigned to Vermont are likely to be lower, because regional cost treatment is likely to be accorded to some of the NPR elements that have been designated as potentially localized PTF, and because the $56.5 million estimate is based on the maximum expected cost of the potential localized PTF elements. In particular, the costs of the Granite substation redesign are likely to be regionalized. With the expected regionalized treatment of the Granite redesign costs, Vermont's share decreases to approximately $48.8 million, calculated as follows:

Non-PTF costs (borne entirely by Vermont):	$15.9 million
Localized PTF costs (borne entirely by Vermont):	$25.3 million

12. I.e., this calculation uses the maximum cost estimates for the potential localized PTF elements. *See* exh. VELCO Remand-5.

Regionalized PTF costs (4.09 % borne by Vermont):	$ 7.6 million[13]
Total cost borne by Vermont:	$48.8 million

Findings 21–25, above; exh. VELCO Remand-5; tr. 9/12/05 at 235 (LaForest).

Alternatives to the Project

28. In the earlier proceedings in this Docket (i.e., the proceedings leading up to the January 28, 2005, Order), we analyzed several possible alternatives to the NRP for addressing the reliability needs of northwest Vermont. The alternatives included transmission-only alternatives, and Alternative Resource Configurations ("ARCs") that included non-transmission resources. Each of the ARCs included a substantial number of the NRP's transmission elements – those that provide voltage control, ensure system stability, or direct flows – because those elements could not be reliably replaced with non-transmission alternatives. Order of 1/28/05 at 39–40, 48; exh. VELCO MDM-2 at 1, 3.

29. Compared to the NRP at its original estimated cost, only one alternative – ARC 5 – was more cost-effective than the NRP, based on net-present-value total societal costs. However, ARC 5 would not be reasonably assured of timely implementation. Exh. VELCO MDM-2 at 67; Montalvo pf. at 10–11; Order of 1/28/05 at 51–52.

30. The single largest driver of the current, higher costs of the NRP – the substantial increase in market costs for constructing transmission facilities – would apply to all transmission alternatives to the NRP. Thus, the cost of those transmission facilities included in the alternatives previously analyzed in this Docket would be expected to have risen at approximately the same rate as the increase in the costs of the NRP. Tr. 9/12/05 at 91–92, 229–30 (LaForest).

31. Non-transmission alternatives have also risen in cost. Tr. 9/12/05 at 225–26 (Pence).

32. A re-analysis of the cost-effectiveness of alternatives to the NRP, using current cost estimates and updated timeframes for when resources would come online, indicates that ARC 4

13. Calculated as follows: $184.6 million (from exh. VELCO Remand-5), minus $1 million to reflect the removal of costs for the 345 kV steel poles, plus the 15% contingency, minus $25.3 million in localized PTF costs, results in $185.8 million of regionalized PTF costs. Vermont's 4.09% share of this figure is approximately $7.6 million.

and ARC 5 are each more cost-effective than the NRP, based on net-present-value total societal costs. Exh. VELCO Remand-2 at 2–4, 21–26.

33. ARC 4 and ARC 5 each include substantial local generation. ARC 4 includes a 200-MW combined-cycle unit and 120 MW of combustion turbines, while ARC 5 requires three 40-MW combustion turbines. Montalvo pf. at 5–6.

34. The most significant factor in the different results obtained in the re-analysis of the alternatives compared to the original analysis is the effect of Locational Installed Capacity ("LICAP") pricing program for the New England regional generation market. The re-analysis assumed that LICAP would be fully and timely implemented. In fact, the Federal Energy Regulatory Commission has recently suspended implementation of LICAP. A significant delay in LICAP, or the implementation of a different pricing scheme that would lower the value of capacity, would increase the costs of ARC 4 and ARC 5 relative to the NRP. Tr. 9/12/05 at 265–68 (Smith).

35. The re-analysis of the alternatives was further biased in favor of the ARCs in that it did not include in ARC 4 and ARC 5 the possible costs of resources to bridge the gap until the ARCs' resources become available. Tr. 9/12/05 at 268–69 (Smith).

Consequences of Reopening

36. Many elements of the NRP are needed to reliably serve load levels that had been already reached as of the close of evidence in this proceeding. (This does not include the 345 kV line which, as discussed in Finding 38, below, is also needed at current load levels.) Those elements collectively comprise approximately two-thirds of the estimated Project cost. Order of 1/28/05 at 35.

37. As Vermont's summer peak reaches the 1,100 MW load level, Vermont's bulk transmission system will become increasingly less reliable. Order of 1/28/05 at 23, 31, 36.

38. Our January 28, 2005, Order found that the 345 kV line was needed at the critical 1,100 MW summer load level. That conclusion was based on the assumption that certain transmission upgrades in New Hampshire would be in place. Those New Hampshire upgrades have been delayed, meaning that the 345 kV line is needed to reliably serve *current* Vermont load levels.

Order of 1/28/05 at 31, 35–36; tr. 9/12/05 at 81 (LaForest); VELCO Exhibit Planning-6 at 6; Planning Panel pf. at 5–6.

39. Vermont reached a new winter peak electric demand of 1086 MW on December 20, 2004, and a new summer peak of 1073 MW on July 19, 2005. Exh. VELCO Remand-1 at 2; exh. VELCO Remand-6; tr. 9/12/05 at 70 (LaForest).

40. If the Board reopens this proceeding, it would likely result in delays in construction of the NRP. The NRP is a complex construction project with a tight, coordinated schedule. Interruptions and delays in the schedule from reopening would likely result in disproportionate delays in construction for a number of reasons, including the need to remobilize resources, delays in fabrication of equipment, the need to reschedule outages with ISO-New England, and the potential loss of seasonal construction windows. Tr. 9/12/05 at 62–69 (Bowers).

41. Reopening the proceeding would likely result in further substantial cost increases for the NRP, due to the market forces that have driven much of the recent cost increase. Other factors may also increase costs, including cancellation costs for equipment and personnel, and the possible need to remobilize resources if coordinated activities in the construction schedule fall out of synchronization. Tr. 9/12/05 at 67–69 (Bowers), 183–84 (Dunn), 244 – 45 (Bowers).

42. If the NRP is delayed as a result of reopening this proceeding, more Vermont load will be exposed to outages, and there will be a greater likelihood of outages that have adverse reliability consequences for the state and, potentially, for the region as a whole. Tr. 9/12/05 at 71–73 (LaForest).

IV. DISCUSSION

A. Procedural Issues

Before we turn to the question of whether to reopen our January 28, 2005, decision, we first address three procedural issues raised by the parties: (1) New Haven and CLF's claim that the Board's proceeding on remand has provided them with insufficient opportunity to present their cases; (2) VELCO's request for official notice; and (3) the Department's proposal for measures that would apply in future proceedings.

1. Due Process

CLF and New Haven each contend that they have not had a fair opportunity to present their cases. CLF contends that "[f]undamental principles of due process and fairness require the Board to reopen the proceedings to allow an honest evaluation of the effect of the cost increase."[14] CLF asserts that the September 12, 2005, hearing was insufficient to satisfy the requirements of due process and a fair hearing. New Haven similarly contends that it has not yet had an opportunity for a full and fair presentation of its evidence and arguments.

Although they complain about a lack of process, neither CLF nor New Haven explain what additional process should have been provided within the thirty days allotted us to make our decision on whether to reopen our proceedings.[15] Instead, both CLF and New Haven contend that in order to have a fair hearing on the increased costs and the implications thereof, the Board must reopen the proceedings to allow time for full preparation and presentation on those issues.

We are not persuaded. CLF and New Haven point to no case law indicating that due process automatically requires reopening a proceeding if new evidence comes to light.[16] Instead, as more fully discussed below, precedent in Vermont and elsewhere is clear: when new evidence emerges subsequent to a final order, the tribunal has substantial discretion whether to reopen. In exercising that discretion, the tribunal may consider the prejudice to the parties, and should only reopen for newly discovered evidence if there is a showing that the new evidence is likely to change the outcome.[17] CLF and New Haven would circumvent the first step of the process on remand — determining whether it is appropriate to reopen — and go directly to a reopened proceeding. Such action would comport with neither established precedent nor the Court's remand order.

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14. CLF September 16, 2005, Brief at 2.

15. New Haven served discovery requests on VELCO prior to the remand, and complains that VELCO did not respond. However, New Haven never filed a motion to compel pursuant to, and in accordance with, V.R.C.P. 26(h).

16. Indeed, if that were the prevailing legal standard, presumably the Supreme Court's remand order would have required us to reopen our proceedings, rather than give us thirty days to make our own decision.

17. As discussed below, if misconduct by a party had prevented the evidence from emerging in a timely fashion, a complaining party need not show that the new evidence would be likely to change the outcome. Instead, the complaining party would need to demonstrate that the misconduct prevented it from fully and fairly presenting its case.

Furthermore, all parties, including CLF and New Haven, have known of the cost increase since VELCO's July 8 letter, and have known of the Board's interest in possibly reopening this proceeding since our July 11 memorandum. New Haven itself filed a request for remand with the Court on July 20. The Board received the Court's remand order late in the day on August 24.[18] The next day we issued a memorandum to the parties, and a notice of the September 8 oral argument and September 12 evidentiary hearing,[19] thereby providing 18 days' advance notice of the evidentiary hearing, out of the total of 30 days available for us (in actuality, 29 full days) to reach our decision. We fail to perceive what additional process we reasonably could have provided, and CLF and New Haven did not request or identify any further process that we should have offered within the thirty-day remand period. If relief from this timetable is what CLF and New Haven seek, this Board is not the proper forum for that request.

2. Official Notice

VELCO asks "that the Board take official notice of generally recognized technical facts contained in the U.S. Department of Energy, Cost Estimating Guide, Table 4–1 (1997)," pursuant to 3 V.S.A. § 810(4).[20] The Department opposes VELCO's request.

We decline to take official notice of Table 4–1 of the Cost Estimating Guide. VELCO has not provided the parties or the Board with a copy of the complete document, and thus we and the parties have no way, without further research,[21] of determining the foundation and the context for the information set forth in Table 4–1. As we discussed in a previous Order in this Docket:

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18. We first received the Court's order by facsimile at 3:15 p.m. on August 24.

19. We issued our notice immediately upon the remand, in order to schedule the argument and hearing as early as practicable while still providing at least twelve days' advance notice of the argument and hearing. (We also informed the parties that the hearing would be canceled if we later determined that the hearing would not be necessary.) 30 V.S.A. § 10(b) requires that, with limited exceptions, "the board shall give twelve days' notice of all hearings." While our September 12 hearing might be considered to fall within the exception for a continued hearing – given that we had previously held evidentiary hearings in this Docket – we provided sufficient advance notice to ensure compliance with the requirements of Section 10 within the limited, 30-day timeframe for our decision on remand.

20. VELCO attached Table 4–1 to its September 16 brief.

21. Neither we nor the other parties can reasonably be expected to conduct such research within the extremely tight schedule for our decision on remand — we have had but thirty days overall to conduct proceedings and render our decision, with but one week remaining as of the date of VELCO's request for official notice.

> More instructive are the relevant provisions of the state Administrative Procedure Act, which provides that, in contested cases,
>
> > Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.
>
> 3 V.S.A. § 810(4). Thus, we may take notice of "generally recognized technical or scientific facts within [the Board's] specialized knowledge" and of "judicially cognizable facts." A judicially cognizable fact
>
> > must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.
>
> V.R.E. 201(b).[22]

Without more information — which VELCO has not supplied — we are unable to determine whether the facts set forth in Table 4–1 are "generally recognized," "generally known," or "not subject to reasonable dispute." We therefore deny VELCO's request for official notice.

3. Measures for Future Proceedings

The Department has proposed, and VELCO has opposed, the Board's future implementation of measures to promote greater cost accountability and more accurate cost estimation. These issues go beyond the limited scope of the Court's remand, and accordingly we will not resolve them in the current Order.[23]

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22. Order of 10/6/04 at 4.

23. We do, however, note our appreciation for the Department's intention to pay close attention to these issues in future Section 248 proceedings. We fully expect not only the Department, but also project applicants, to meaningfully address these issues in future Section 248 reviews.

B. The Standard for Reopening

We next address the question of the appropriate standard for reopening. The standards that the parties have put forward fall into two general categories: those that apply under V.R.C.P. 60, and those that govern amendments to projects.

1. Rule 60

Rule 60(b), which applies to Board proceedings pursuant to Board Rule 2.221, sets forth the requirements for reopening a previous, final decision. Rule 60(b), in pertinent part,[24] provides that:

> On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: . . . (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; . . . or (6) any other reason justifying relief from the operation of the judgment.

2. Amendments to Projects

If a project under review in a Section 248 proceeding is amended prior to a Board decision, an amended petition may be required pursuant to Board Rule 2.204(G). If the project is amended after Board approval, the Board applies the "substantial change" test to determine whether an amended CPG is required.[25]

a. Board Rule 2.204(G)

Board Rule 2.204(G), on its face, applies to amendments to filings. The Rule establishes procedural and substantive standards that govern amendments to filings in Board proceedings.

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24. Rule 60(b) includes six bases upon which a final decision may be reopened. No party has claimed that the provisions of Rule 60(b)(1), (4), or (5) apply to the current circumstances.

25. A third scenario is that in which the Board denies a CPG for a proposed project, and the applicant subsequently seeks approval for a modified version of the project. This third scenario is not relevant to the present proceeding.

b. Substantial Change Test

The Board applies Act 250's substantial change test to determine when changes to a certificated project require an amended certificate — in other words, to determine whether the modified project that the permittee seeks to construct falls within the scope of the previous Board approval. *In re Citizens Utilities Co.*, Docket Nos. 5841/5859, Order of 6/16/97 at 135–136; *In re Petition of Vermont Electric Cooperative*, Docket No. 6544, Order of 2/20/02 at 6–7; *see also In re Vicon Recovery Systems*, Docket No. 4813-A, Order of 3/23/87 at 3–4.

3. Determination of the Appropriate Standard

We conclude that given the limited scope of the remand from the Court, the issue before us — whether to reopen our previous approval of the Project — properly falls under the provisions of Rule 60, and not the standards that govern amendments to projects.

There is no dispute among the parties that Rule 60 applies here. The disagreements among the parties focus instead on (1) which provisions of Rule 60 apply,[26] and (2) whether the standards for amended projects also apply.

Board Rule 2.204(G) by its clear terms applies to amendments to *filings*, whereas the question presently before us is whether to reopen a final order of this Board. Accordingly, Rule 2.204(G)(1) is not germane to our present determination. As the Department correctly notes:

> Board Rule 2.204(G)(1) governs "proposed amendments to any filing" in a proceeding. It does not govern whether to relieve a party from judgment or whether a change in a permitted project requires an amendment.[27]

The substantial change test is likewise inapposite. The substantial change test does not apply here for the fundamental reason that the matter presently before us, on remand from the Supreme Court, is "limited to allowing the Public Service Board to determine whether to *reopen* the proceedings below in light of the new cost information" (emphasis added). Instead, the substantial change test determines when changes to a previously approved project are so material that the permittee must apply for an *amended* CPG. *Citizens* at 308 (ordering Citizens to "apply for an amended Certificate of Public Good, pursuant to 30 V.S.A. § 248, for the revisions to the

26. We address below which of Rule 60's provisions apply to the current circumstances.
27. Department's September 16, 2005, Proposal for Decision at 18–19.

120 kV transmission line project"). With a substantial change, the Board's order approving the original project is not reopened — the original CPG remains valid for the project as approved — but instead the amended application is considered in a new proceeding.[28] *See, e.g.,* Docket No. 5331-A, Order of 8/31/98 (new proceeding reviewing Citizens' petition for an amended CPG for the 120 kV line); Docket No. 4813-A, Order of 3/23/87 (requiring permittee to apply for amended CPG to reflect changes to project); Docket No. 6737, Order of 9/12/02 (new proceeding reviewing changes to previously certificated substation).

In short, Board Rule 2.204(G)(1) is applied to amendments prior to a final Board decision; the substantial change test is applied following a final Board order to determine whether the permitted project has changed such that an amended permit is needed; and Rule 60 is applied to determine whether to reopen a final Board order. Consequently, it is Rule 60, and not Board Rule 2.204(G)(1) or the substantial change test, that governs our decision of whether to reopen our proceeding.[29]

We next turn to the application of Rule 60 to the matter before us.

C. Merits of Reopening

Reopening a prior, final order under Rule 60 lies in the sound discretion of the tribunal. *Lyddy v. Lyddy*, 173 Vt. 493, 497 (2001). In exercising that discretion, the tribunal may consider the prejudice that reopening would entail. *Teamsters, Chauffers, Warehousemen, and Helpers Union Local No. 59 v. Superline Transport. Co.*, 953 F.2d 17, 20 (1st Cir. 1992). A Rule 60 motion usually requires a hearing, unless the motion is totally lacking in merit.[30] *Blanchard v. Blanchard*, 149 Vt. 534, 537 (1988).

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28. If a substantial change has occurred, without an amended CPG the permittee would not be authorized to proceed with the modified project, regardless of whether the original CPG were on appeal.

29. The Department requests that we provide notice that, on a prospective basis, the substantial change test will not be limited to physical changes, but could also apply to costs increases for permitted projects. We do not rule on this request in today's Order for two related reasons. First, as noted above, the substantial change test does not apply to the matter before us. Second, the Court's remand is limited to the question of whether to reopen *this* proceeding.

30. CLF criticizes us for holding our September 12 hearing. However, Vermont precedent strongly suggests that a hearing was called for unless the arguments advanced by those seeking reopening — including CLF — were completely lacking in merit.

Rule 60(b)(2) allows the Board to grant relief from a final order on the basis of newly discovered evidence. To do so, however, requires that the new evidence be "'of such a material and controlling nature as will probably change the outcome.'" *In re Petition of Ryegate Wood Energy Co.*, Docket No. 5217, Order of 11/30/90 at 4, *quoting Moore's Federal Practice* § 60.23[4] (2d ed. 1990).

Rule 60(b)(3) allows the Board to reopen a final order for "fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party." A party proceeding under Rule 60(b)(3) must show such misconduct "by clear and convincing evidence," *Gavala v. Claassen*, 2003 VT 16 ¶ 5, 175 Vt. 487 (2003), and demonstrate that the misconduct prevented the moving party from fully and fairly presenting its case. *Karak v. Bursaw Oil Corp*., 288 F.3d 15, 21 (1st Cir. 2002).

Rule 60(b)(6) allows reopening a final order for any other reason justifying relief. Rule 60(b)(6) only applies when the basis for relief does not fall within any of the other five subsections of Rule 60. *Perrott v. Johnston*, 151 Vt. 464, 466 (1989).

We address these three subsections of Rule 60 in reverse order. We conclude that Rule 60(b)(6) does not apply, because the basis upon which our January 28, 2005, Order would be reopened — newly discovered evidence (which, New Haven alleges, is the result of VELCO's misconduct) — clearly is encompassed within Rule 60(b)(2) and, perhaps, Rule 60(b)(3).

Turning to Rule 60(b)(3), New Haven contends that this subsection "on its face applies."[31] New Haven asserts that Rule 60(b)(3) applies to unintentional as well as intentional misrepresentation. We are unpersuaded by New Haven's contention. New Haven has not identified any "clear and convincing evidence" of misrepresentation, and has not demonstrated that its case was prejudiced. Furthermore, the evidence that we do have before us indicates that VELCO had no basis for suspecting that the cost of the Project had substantially increased until late 2004, and that it did not become aware of the magnitude of the increase until well after we issued the January 28, 2005, Order.

Nor does Rule 60(b)(2) support reopening our proceeding. No party has identified any basis for us to conclude that the revised cost estimate is "of such a material and controlling nature

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31. New Haven September 1, 2005, Motion and Memorandum at 2.

as will probably change the outcome." While the near doubling of projected costs for the NRP may, at some visceral level, seem to call for reexamination of the Project, the cost increase in fact is not likely to change the outcome of our January 28, 2005, Order. This is apparent upon examination of that Order and upon consideration of the impact (or more accurately, lack thereof) that the increased costs would have on the conclusions set forth in the Order.

Our January 28, 2005, Order did not approve the NRP on the basis that it was the lowest-cost option that we reviewed. Instead, in our January 28, 2005, Order, we found that there was an alternative (ARC 5) that would cost less, on a total societal basis, than the Project.[32] We nonetheless concluded that the Project satisfied criteria (b)(2) and(b)(4) of Section 248 because:

> construction of the proposed Project is the most cost-effective means of meeting the current and future demand for service in northwest Vermont. No other proposal presented in this case, including the generation, energy efficiency, and load response measures included in the various ARCs, can meet the expected need for service with an appropriate level of reliability in a timely manner.[33]

We found that the lower-cost alternative was not reasonably assured of being implemented quickly enough to meet Vermont's reliability needs, due to non-cost factors:

> However, ARC 5 faces a greater number of implementation uncertainties, such as siting and building generation, securing fuel supply and installing fuel supply infrastructure. Due to these substantial uncertainties, we conclude that while ARC 5 may have a lower projected total societal cost than the proposed Project, it is not a viable alternative. There is not a reasonable likelihood that the generation component of ARC 5 — three 40-MW generating sations [*sic*] — could be implemented within the necessary timeframe.[34]

The parties seeking a reopened proceeding have not identified any way in which the increased costs of the NRP would change the non-cost barriers to timely implementation of the alternatives. They have, therefore, failed to meet their burden under Rule 60(b)(2) of showing that reopening would likely change the outcome of our proceeding. We reach this same conclusion regardless of whether we consider the evidence presented at the September 12

32. Order of 1/28/05 at 50.
33. Order of 1/28/05 at 52.
34. Order of 1/28/05 at 53.

hearing.[35] If we ignore that evidence, we are still left with no demonstration by the parties seeking reopening that the new cost estimate is "of such a material and controlling nature as will probably change the outcome."

If we consider the September 12 evidence, we find only confirmation that the new cost information is unlikely to change the outcome. Based on the updated cost information, ARC 5 is still, on its face, more cost-effective than the NRP, and ARC 4 now has become more cost-effective as well.[36] Each of these two ARCs is dependent on the installation of substantial amounts of local generation capacity. On September 12, we heard no evidence to indicate that the higher costs of the NRP would help overcome the implementation barriers for the local generation upon which ARCs 4 and 5 are dependant.

In its post-hearing brief, New Haven contends that one argument it presented during the initial proceedings — that the benefits of the NRP should be compared to the status quo — "gained little traction, because of the appeal of the huge PTF contribution."[37] According to New Haven:

> Thus, in its January 28, 2005, Order, this Board found that it did not need to accept or reject New Haven's and CLF's argument that it should apply the NYSEG/Entergy/RRRP approach [of comparing the Project to the status quo] - because the evidence before it was that Vermonters would be paying such a small cost to fix the problem, whatever the cost of the status quo would be . To use the Board's wording, Vermonters had contributed their own dollars to PTF projects in other states in the past, so "it is Vermont's turn" to reap the subsidy now. See 1/28/05 Order at page 53, footnote 80.[38]

We reject New Haven's argument as fundamentally flawed, for it is premised on a clearly erroneous characterization of our January 28, 2005, Order. New Haven has removed the quoted phrase, "it is Vermont's turn," from its context and, in so doing, attempts to portray the Board's

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35. CLF asserts that no hearing was needed for the Board to reopen the proceeding. Tr. 9/8/05 at 24 (Levine).

36. Their apparent cost advantages arise at least in part from the assumption of full implementation of LICAP. The delay of LICAP, and the possible modification of the regional capacity pricing mechanism, could undermine the cost advantage of the generation-dependent ARCs 4 and 5. Their cost advantage would be further eroded if ARCs 4 and 5 had been assigned the costs of additional resources for bridging the gap until the ARC resources come on-line.

37. New Haven September 16, 2005, Memorandum at 4.

38. New Haven September 16, 2005, Memorandum at 4.

Order as stating the opposite of what in fact it clearly states. The full text of the footnote upon which New Haven relies reads as follows:

> This cost differential [between ARC 5 and the NRP] ignores the PTF treatment of costs. The designation of many of the components of the proposed Project as PTF facilities means that a substantial amount of the proposed Project's costs would be paid by out-of-state entities. *We reject the contention that, in assessing the cost-effectiveness of alternatives, we should discount the direct costs of the proposed Project by that amount that would be borne by those outside Vermont's borders.* Over the years, Vermont has paid its share of pooled costs for projects outside this state. For the proposed Project, it is Vermont's turn to receive the benefits of pooled treatment. *In the future, Vermont will likely be required to continue to pay its proportionate share for out-of-state projects. Thus, PTF treatment carries costs as well as benefits.*[39]

Rather than *rely* on the PTF contributions from outside Vermont in assessing the comparative costs and benefits of the NRP and its alternatives, as New Haven paints our Order, we expressly *rejected* such an approach.

Even if we were to limit our consideration to only those costs that Vermont is likely to pay, New Haven has not presented a basis for reopening the proceeding. With the higher cost estimate, the maximum amount that might reasonably be expected to be paid by Vermont would be $48.8 million. That would represent a $37 million increase over the amount originally projected for Vermont to pay ($11.7 million), and constitutes approximately one-fifth of the total costs.[40] The likely amount to be paid by Vermont may well be lower, given that additional costs might be shared region-wide. Furthermore, of the net increase in costs to Vermonters, over half has resulted from requirements that were requested by New Haven, the Towns of Charlotte and Shelburne, ACRPC, and other parties, and which the Board subsequently imposed in the January 28, 2005, order.[41] More significantly, the parties seeking reopening have not demonstrated how the increased costs to Vermont would likely change the outcome, for the same

39. Order of 1/28/05 at 58 n. 80 (emphasis added).

40. $48.8 million (from Finding 27), divided by $227 million, which equals 21.5 percent.

41. $20.8 million total for the underground placements of the 115 kV line, the relocation of the New Haven substation, and the re-route of the 345 kV line (from Finding 22), divided by $37 million, which equals 56 percent.

reasons explained above — namely, the implementation barriers to the local generation that the non-transmission alternatives would require.[42]

New Haven also asserts that there are viable alternatives to the NRP that should be explored, namely, 115 kV and 230 kV alternatives to the 345 kV line, an exclusively demand-side management Alternative Resource Configuration, and the possibility of overcoming the implementation barriers to ARC 5 and other non-transmission options. These issues were all litigated during the previous proceedings in this Docket; our previous rejection of New Haven's positions was not dependent upon the relative costs of the NRP, and New Haven has not demonstrated how the increased cost of the NRP would be likely to change our decision on these issues.[43] Consequently, these points do not justify reopening the proceeding.

Finally, and importantly, we find that the general good of the people of Vermont would best be served if the proceeding is not reopened. As the findings set forth above make clear, reopening the proceeding is likely to result in delayed construction with attendant, further cost increases. And, because Vermont's electrical demands continue to grow, with summer peaks approaching the critical 1,100 MW level, delays in construction of the NRP would result in greater exposure to electrical outages, a problem further exacerbated by delays in construction of transmission upgrades in New Hampshire.

Certainly there are countervailing considerations in weighing whether reopening would do a service or a disservice to the public good. Our review of major utility resource decisions relies, in part, on accurate and timely cost information from the utilities. We cannot and will not blithely disregard the importance of reliable cost estimates. However, under the current circumstances, with most of the NRP's cost increase the result of market forces and requirements of our January 28, 2005, Order, with Vermont facing significant reliability concerns, and with no alternatives that are reasonably assured of addressing those reliability concerns in a timely fashion, we conclude that reopening the proceeding would be worse than an empty exercise. It

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42. For the same reasons, we reject New Haven's additional contention that the higher costs to Vermonters requires reopening to address rate and bill impacts.

43. In addition, with respect to transmission alternatives to the NRP, the evidence from the September 12 hearing is that all transmission construction has seen cost increases in approximately the same proportion as experienced with the NRP.

would hold no realistic prospect of changing our prior determination, and any message that reopening might send to VELCO and future Section 248 applicants may well carry a heavy cost for Vermonters.[44] Instead, the best course of action is to work to improve VELCO's planning process, as we announced in our January 28, 2005, Order and have since initiated in Docket No. 7081.

We emphasize the importance of VELCO and other utilities to disclose new, updated information that is of potential significance to our decisions, and encourage such disclosure. Here, VELCO came forward with the new cost information that, clearly, could have raised questions about the continued merits of moving forward with the NRP. It was precisely to consider such questions that we announced, in our July 11 memorandum, our interest in a remand from the Court. Now that those questions have been considered, we have concluded that we need not and should not reopen our proceeding, for the reasons set forth in today's Order.

V. CONCLUSION

For the reasons explained above, we decline to exercise our discretion to reopen this proceeding, and we deny New Haven's and CLF's motions to do so.

SO ORDERED.

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44. We would appreciate VELCO's continuing to disclose, in a timely manner, any further substantial expected cost increases or other material changes in relevant circumstances. Given the limited scope of our remand from the Court, we decline to order VELCO to do so, but hope that VELCO would voluntarily do so.

Dated at Montpelier, Vermont, this 23rd day of September, 2005.

_____)	
)	PUBLIC SERVICE
)	
s/David C. Coen)	BOARD
)	
)	OF VERMONT
s/John D. Burke)	

OFFICE OF THE CLERK

FILED: September 23, 2005

ATTEST: s/Susan M. Hudson
Clerk of the Board